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Arizona Corporation Commission

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Attorneys for Johnson Utilities Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF DIVERSIFIED
WATER UTILITIES, INC. TO EXPAND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO INCLUDE ALL OF
SECTION 13, 14, 15, 23 AND THAT
PORTION OF SECTION 16 EAST OF
RAILROAD TRACKS ALL IN T3S, R8E,
PINAL COUNTY, ARIZONA.

DOCKET NO. W-02859A-04-0844

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER SERVICE.

DOCKET NO. WS-02987A-04-0869

MOTION TO CONTINUE

Johnson Utilities Company ("JUC") hereby files this Motion to Continue the proceedings in the above-captioned matters. This motion is made following the landowners' withdrawals of the requests for an extension of water utility service during the April 18, 2005 public comment session held in the consolidated dockets.

I. PROCEDURAL BACKGROUND

On November 24, 2004, Diversified Water Utilities, Inc. ("Diversified") filed with the Arizona Corporation Commission ("Commission") an application (designated as Docket No. W-02859A-04-0844) for an extension of its Certificate of Convenience and Necessity ("CC&N") in Pinal County by either amending Decision No. 63690 (September 4, 2001), or alternatively, by treating the filing as a new application. In its application, Diversified requests an extension of its CC&N to include all of Sections 13, 14, 15, 23 and that portion of Section 16 east of the railroad tracks located in Township 2 South, Range 8 East (the "Diversified Expansion Area"). However,

1 Diversified failed to support its application by a single request from a landowner, developer or
2 builder for water utility service.

3 On December 3, 2004, JUC filed an application (designated as Docket No. WS-02987A-
4 04-0869) for an extension of its water CC&N to include Sections 13 and 23, Township 3 South,
5 Range 8 East in Pinal County, Arizona ("JUC Expansion Area"). See JUC Application at ¶ 2.
6 JUC's application was supported by written requests from property owners located in the JUC
7 Expansion Area, as well as a request from Centex Homes, a builder, which was then planning
8 development in that area.¹

9 Diversified moved to intervene in JUC's application, and on March 2, 2005, a Procedural
10 Order was issued consolidating both the Diversified and JUC applications for CC&N extension.
11 By way of subsequent procedural orders, the proceedings were set for hearing in July 2005 and
12 several pretrial filings were ordered of the parties. April 18, 2005, a date previously set for
13 hearing was retained for purposes of taking public comment and it was during that public
14 comment session that the landowners in the JUC Expansion area withdrew their requests for an
15 extension of water utility service. As a consequence, JUC moved orally for dismissal or
16 continuance of the proceedings asserting that there is no longer any evidence of a public need for
17 water utility service to either the JUC Expansion Area or the Diversified Expansion Area at this
18 time.

19 In response, the Presiding ALJ asked JUC to submit a written motion requesting dismissal
20 or continuance of these proceedings. Judge Nodes further stayed all proceedings in the
21 consolidated dockets pending a ruling on JUC's motion. Thereafter, despite this stay, Diversified
22 provided public notice on April 19, 2005, to Jeff Schneidman, the ABCDW, L.L.C. representative
23 who provided public comment on April 18, 2005. A copy of the public notice is attached hereto
24 as Exhibit 1. It is entirely unclear why Diversified ignored the stay imposed by the Presiding

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26 ¹ Notably, while the JUC Expansion Area is covered by Diversified's separate application, certain additional areas
in the Diversified Expansion Area are not included in JUC's application.

1 ALJ, however, this particular landowner clearly has notice of the proceedings and supports the
2 instant request for continuance as evidenced by both the comments made on April 18, 2005 and
3 the supported affidavit submitted concurrently with this motion.

4 **II. REQUEST FOR CONTINUANCE**

5 In this motion, JUC requests that the Commission continue the proceedings in both of the
6 dockets making up this consolidated docket. A continuance is proper at this time because neither
7 JUC nor Diversified can establish a current need for an extension of water utility service in either
8 requested expansion area. Without any requests for such service, there is no evidence of public
9 need making it virtually impossible for the Commission to establish and conclude from the record
10 that an extension to either expansion area would serve the public interest.

11 It cannot be legitimately disputed that public need and necessity for water utility service is
12 a Commission prerequisite to granting CC&N extension requests. *See, e.g.*, Decision No. 67440
13 (December 3, 2004),² Conclusion of Law at ¶ 4; Decision No. 67167 (August 10, 2004),³
14 Conclusion of Law at ¶ 4, (“There is a public need and necessity for water utility service in the
15 proposed extension area”). In its application, Diversified argues that “The public convenience
16 and necessity require the granting of this Application” because “there is a need for water service
17 to the [Diversified Expansion Area].” *See* Diversified Application at ¶ 13. The JUC Application
18 is even more specific, requesting an expansion of JUC’s water CC&N based on written requests
19 for water utility service from owners with property located the JUC Expansion Area. *See* JUC
20 Application at ¶ 2. Staff reached the same conclusion in this matter when it initially rejected
21 Diversified’s application because no request for water utility service was offered by Diversified to
22 support its application. *See* Letter of Insufficiency to Diversified dated December 7, 2004.

23
24 ² In the Matter of the Application of New River Utility Company for an Extension of its Existing Certificate of
25 Convenience and Necessity in Maricopa County, Arizona. Docket No. W-01737A-04-0502.

26 ³ In the Matter of the Application of Strawberry Water Co., Inc., for an Extension of its Certificate of Convenience
and Necessity. Docket No. W-03513A-01-0727.

1 Now, it is clear that there is no pending request for an extension of water utility service to
2 either the JUC Expansion Area or the larger Diversified Expansion Area. The landowners
3 requesting service from JUC have withdrawn their requests for service, as evidenced by their
4 comments at the April 18, 2005 public comment session and by the affidavits attached hereto.
5 See Exhibit 2 (including affidavits from each owner of real property in the JUC Expansion Area).
6 Diversified's request was never supported by a request for water utility service and the
7 landowners in the Diversified Expansion Area, including the portions not covered by JUC's
8 application, are not requesting an extension of service at this time. See Exhibit 2 (including
9 affidavits from owners of real property in the Diversified Expansion Area, with the exception of
10 the Arizona State Land Department).⁴ These affidavits clearly establish that there is not presently
11 "a public need and necessity for water utility service in the proposed extension area."
12 Accordingly, the proceedings should be continued until such time as a request for water utility
13 service exists.

14 The absence of evidence of a current need and necessity for water utility service in the
15 proposed expansion areas is likely to result in an incomplete and inadequate evidentiary record if
16 the proceedings are not continued at this time. In preparing its report and recommendation for
17 applications to extend water CC&Ns, Commission Staff conducts an analysis of the proposed
18 water infrastructure facilities, including a review of engineering designs, cost estimates and water
19 availability, to assess whether the public interest will be served in granting the proposed
20 extension. While there were submitted by JUC preliminary designs and cost estimates for
21 proposed facilities in Sections 13 and 23 of the two requested expansion areas, these plans and
22 estimates are now subject to change and revision given the property owners' decision to postpone
23 development. Nor can such an analysis be conducted for the other areas subject to Diversified's

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25 ⁴ The property owners providing affidavits in support of this motion include: ABCDW, L.L.C., Gillespie Properties,
26 Inc., Wolfkin Farms, Wolfcor, LLC, Vintage Farms, Inc. and Bella Sierra, L.L.C. Because of time constraints,
Exhibit 2 contains facsimile copies. JUC will supplement this filing with original affidavits once they are duly
received.

1 request as there are no such engineering designs and/or cost estimates, or proposals to construct,
2 for water facilities within Sections 14, 15 and parts of 16 based on a current development plan. In
3 fact, the landowners in those areas have specifically rejected an extension of service by
4 Diversified. See Exhibit 2. Without knowing the nature and scope of the new developments
5 needing water utility service, there is simply no way for the parties or Staff to conduct the
6 necessary analysis or for the Commission to issue a complete and adequate order that will serve
7 the public interest.

8 It is expected that Diversified will argue, as it did at the April 18, 2005 public comment
9 session, that JUC's current wastewater CC&N in the JUC Expansion Area evidences a current
10 need for water utility service. This argument must fail. That there is a need for wastewater
11 service in the JUC Expansion Area is not at issue in these proceedings; it was already established
12 to the satisfaction of the Commission in Decision No. 63960 (September 4, 2001). Subsequently,
13 Commission Staff completed its "Certificate Review" required in Decision No. 63960, and found
14 no basis to amend that decision. Moreover, as a practical matter, JUC is the only viable
15 wastewater provider ready, willing and able to extend wastewater utility service to Sections 13
16 and 23.⁵ Therefore, Diversified should not be heard to now launch some sort of belated collateral
17 attack on the prior decision by the Commission in order to salvage its current, unsupported
18 request for a CC&N extension.

19 **III. RELIEF REQUESTED**

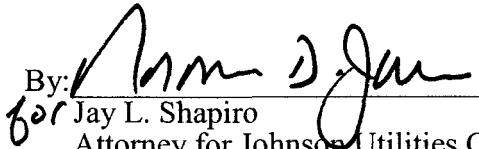
20 Because a current, public need and necessity for water utility service in either the JUC or
21 Diversified expansion areas no longer exists, moving forward with the proceedings at this time
22 will plainly result in an incomplete evidentiary record and potential prejudice to the current
23 property owners and future customers in these areas. In contrast, a continuance at this time will

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25 ⁵ In reliance on the issuance of the wastewater CC&N for the entire area covered by Diversified's application, JUC
26 has incorporated this area into its master planning for wastewater utility service and, even though service is not yet
established, it has constructed certain facilities that will allow JUC to extend service when necessary as part of its
overall design and construction of a regional wastewater utility system.

1 not prejudice either JUC or Diversified as neither is currently subject to a request for an extension
2 of water utility service. Thus, JUC moves for an order continuing this matter until, at least,
3 sometime after January 2, 2006, at which time a status conference would be held to provide the
4 Commission and parties an opportunity to determine if there is then a need for water utility
5 service, and if so, how the matter should proceed.

6 RESPECTFULLY SUBMITTED this 22nd day of April, 2005.

7 FENNEMORE CRAIG, P.C.

8
9 By: 
10 for Jay L. Shapiro
11 Attorney for Johnson Utilities Company

12 ORIGINAL +15 copies filed this 22nd
day of April, 2005:

13 Docket Control
14 Arizona Corporation Commission
1200 West Washington Street
15 Phoenix, Arizona 85007

16 COPY delivered this 22nd day of April, 2005:

17 Dwight Nodes
Assistant Chief Administrative Law Judge
18 Arizona Corporation Commission
1200 West Washington Street
19 Phoenix, Arizona 85007

20 Jason Gellman, Staff Attorney
Legal Division
21 Arizona Corporation Commission
1200 West Washington Street
22 Phoenix, Arizona 85007

23 Jim Fisher
Utilities Division
24 Arizona Corporation Commission
1200 West Washington Street
25 Phoenix, Arizona 85007
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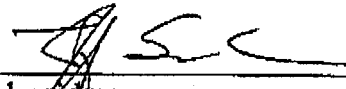
COPY emailed and mailed this 20th day of April, 2005:

William P. Sullivan, Esq.
David M. Lujan, Esq.
Curtis, Goodwin, Sullivan, Udall & Schwab
2712 N. 7th St.
Phoenix, AZ 85006
Attorneys for Diversified Water Utilities, Inc.

By: 
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ABCDW, INC.
[Original to be filed]

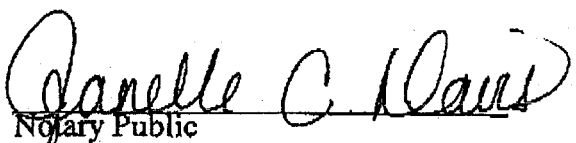
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Jeff Schneider

ABCDW, L.L.C.


SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this
21ST day of April, 2005, by JEFF SCHNEIDERMAN



Notary Public

My Commission Expires:

11-30-2007

 **JANELLE C. DAVIS**
Notary Public - Arizona
Maricopa County
Expires 11/30/07

GILLESPIE PROPERTIES, INC.
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James A. Gillespie

Gillespie Properties, Inc.

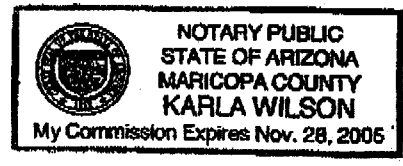
SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this
21st day of April, 2005, by James A. Gillespie



Notary Public

My Commission Expires:

11-28-05



VINTAGE FARMS, INC.
[Original to be filed]

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Kathleen Holderbach, being duly sworn, upon his oath, states:

1. I am a resident of Maricopa County, over 18 years of age and make this affidavit based on my own personal knowledge.
2. I am the Manager of Vintage Farms, Inc. ("Vintage Farms") duly authorized to sign documents and enter into contracts on behalf of Vintage Farms.
3. Vintage Farms currently owns real property ("Property") located in Sections 15 and 16, Township 3 South, Range 8 East in Pinal County. The Property includes parcel numbers 210-15-00409, 210-15-00201 and 210-16-00100. Vintage Farms has no current plans to develop the Property at this time and we have not requested that anyone extend water utility service to the property.
4. I am aware that Diversified Water Utilities, Inc. ("Diversified") has filed an application with the Arizona Corporation Commission to include the Property within its Certificate of Convenience and Necessity in Docket Nos. W-02859A-04-0844 and WS-02987A-04-0869, although there is no need for water service at this time.
5. Vintage Farms has previously explored options with different utility providers, including Diversified, about the future extension of water facilities to serve the Property. However, Vintage Farms concluded that Diversified did not have the technical, managerial or financial capacity to warrant further consideration as a potential water service provider for the Property.

Kathleen Holderbach
Kathleen Holderbach

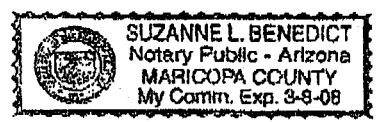
Vintage Farms, Inc.

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this
20th day of April, 2005, by Kathleen Holderbach

Suzanne L. Benedict
Notary Public

My Commission Expires:

3/8/08



BELLA SIERRA, L.L.C.
[Original to be filed]

AFFIDAVIT

STATE OF ARIZONA }
County of MARICOPA } ss.

Daryl Wolfswinkel, being duly sworn, upon his oath, states:

1. I am a resident of Maricopa County, over 18 years of age and make this affidavit based on my own personal knowledge.

2. I am the member of Bella Sierra, LLC. ("Bella Sierra") duly authorized to sign documents and enter into contracts on behalf of Bella Sierra, LLC.

3. Bella Sierra currently owns real property ("Property") located in Section 15, Township 3 South, Range 8 East in Pinal County. The Property includes parcel number 210-15-001B8. Bella Sierra has no current plans to develop the Property at this time and we have not requested that anyone extend water utility service to the property.

4. I am aware that Diversified Water Utilities, Inc. ("Diversified") has filed an application with the Arizona Corporation Commission to include the Property within its Certificate of Convenience and Necessity in Docket Nos. W-02859A-04-0844 and WS-02987A-04-0869. Bella Sierra has never engaged in discussions with Diversified representatives about the extension of water facilities to serve the Property, and there is no need for water service at this time.

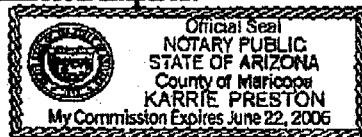

Daryl Wolfswinkel member

Bella Sierra, LLC

1 SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this
2 21 day of April, 2005, by Daryl Wolfswinkel.

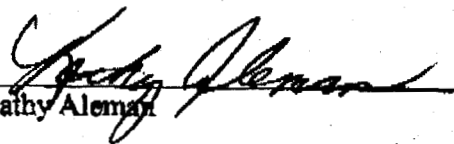
Kami Bush
Notary Public

My Commission Expires:



WOLFKIN FARMS, G.P.
[Original to be filed]

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Kathy Aleman

Wolfkin Farms
Wolfcor, L.L.C.

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this
day of April, 2005, by _____.

Notary Public

My Commission Expires:
